

AGENDA
Interested Persons' Meeting
Conflict-of-Interest Regulations
February 6, 2003
Topics 1 and 2: 10:00 a.m. to noon
Topics 3 and 4: 1:30 p.m. to 4:00 p.m.
8th Floor Hearing Room
428 J Street, Suite 800¹
Sacramento, CA 95814

Staff of the Fair Political Practices Commission will be holding an interested persons' meeting covering four different topics, as set forth below, to solicit public input. The Commission also invites written responses on the four issues presented for discussion. Written comments may be addressed to the Commission at the address set forth above. *A more detailed discussion of the topics is attached.*

Morning Program (10:00 a.m. to noon)

(1) Public Identification of a Conflict of Interest for Section 87200 Filers: New section 87105² creates an obligation for a section 87200 filer to publicly identify a conflict of interest, recuse himself or herself, and leave the room. A proposed regulation interpreting this new section will be discussed.

(2) General Plan: Staff seeks input on the treatment of general plan decisions under the conflict-of-interest rules. In particular, the Commission wishes to explore possible modification of the "public generally" exception as applied to these types of decisions.

Afternoon Program (1:30 p.m. to 4:00 p.m.)

(3) Commission Advice Procedure—Sections 87300-87306 (Conflict-of-Interest Codes): The Commission is considering a regulation to codify the advice procedure regarding conflict-of-interest codes as it applies to individuals, agencies and code-reviewing bodies. Proposed regulation 18329.5 was discussed during a previous interested persons' meeting on November 14, 2002, and was discussed at the December 13, 2002, Commission meeting.

¹ To participate in this interested persons' meeting by telephone, please contact Joan Giannetta at (916) 322-5660.

² All references are to the Government Code unless otherwise specified.

(4) Statements of Economic Interests (Members of Boards or Commissions of Newly Created Agencies): Pursuant to recently enacted section 87302.6, members of boards or commissions of newly created state or local agencies have a new requirement to file statements of economic interests prior to the effective date of his or her agency's approved conflict-of-interest code. These statements are to be filed at the same time and in the same manner as statements filed by individuals required to file pursuant to section 87200. The Commission is considering adopting regulation 18754 to implement the new legislation. Staff may ask the Commission to adopt this new regulation on an emergency basis.

If you are a representative of a public agency or association, please redistribute this notice to your employees or members.

Topical Summaries

Morning Program (10:00 a.m. to noon)

(1) Public Identification of a Conflict of Interest for Section 87200 Filers.

Pursuant to section 87105, which was added to the Political Reform Act (the “Act”) by Assembly Bill 1797 (Harman), additional duties have been created for the situation when a section 87200 filer determines that he or she has a conflict of interest. The Commission will be considering a regulation to codify rules for applying this new statute. Some of the concepts to be addressed are summarized below.

- *The timing of the disclosure.* The Commission will consider whether the identifications will be made following the announcement of the item for discussion but before the discussion commences or at some other time.
- *Description of the conflict of interest.* The Commission may consider the content of disclosure, such as whether the statute requires disclosure of the economic interest or a more specific description of the type of economic interest. The Commission may consider either of these disclosure requirements, both of these disclosure requirements, or other options.
- *Types of situations.* The Commission will consider the scope of the regulation. This includes possibly limiting this regulation to meeting settings when the official is acting in his or her capacity as a section 87200 filer, including all meetings, or including all situations where a section 87200 filer has a conflict of interest.
- *Closed session/absent public official.* Generally, agencies have both open and closed meetings. The Commission will consider whether the same rules apply in a closed session setting as apply to an open meeting. In addition, the Commission may consider what the obligations of an absent public official might be and whether public officials who miss an entire meeting should be treated differently than public officials who are only absent for the item as to which they have a conflict of interest.
- *Oral/written disclosure.* The Commission will consider the method of disclosure, such as whether only oral disclosure is required or if written disclosure will suffice.
- *General public discussion.* Under current regulation 18702.4, a public official can speak as a member of the general public under certain circumstances. The new statute incorporates this exception. The Commission will consider whether the public official may remain in the room during the entire public discussion when the public official has spoken as a member of the general public. The Commission may choose to require that the public official leave the room after he or she speaks, or some other option.

If you have questions or comments on this matter, please contact Galena West, Counsel, Legal Division, at (916) 322-5660 or in writing to the Commission at the address indicated above.

(2) General Plan Issues and the "Public Generally" Exception

Pursuant to Government Code section 87103 and regulation 18707.1, a public official may participate in a decision that materially affects the official's economic interest provided that the material financial effect of the decision is indistinguishable from its effect on the public generally. This rule is referred to as the "public generally" exception. Regulation 18707.1 provides the criteria that must be met before this exception applies.

Commission staff is seeking preliminary input as to the treatment of general plan decisions under regulation 18707.1. In particular, some view the "public generally" exception as difficult to apply as it pertains to an official's residence because it requires comparison of the financial effect on the official's property with the financial effects on the properties of a "significant segment" of the public generally. The Commission has been asked to develop a rule that is easier to apply. Language attempting to address this issue will be presented for discussion. (Check the Commission's web site at www.fppc.ca.gov the week of this interested persons' meeting for draft language.)

Other Issues: The following issues may also be addressed:

a. Direct/Indirect Involvement. To offer additional clarification as to whether an official's property is directly or indirectly involved, it may be useful to codify that certain types of general plan decisions *indirectly* involve an official's property, unless there are specific circumstances where the property will be materially affected. The Commission seeks clarification on the types of decisions that could qualify under such an approach.

b. Whether regulations 18707.1 and 18707.9 need to further define what is meant by "substantially the same manner." Regulation 18707.9 is another "public generally" exception applicable to real property interests.

If you have questions or comments on this matter, please contact Natalie Bocanegra, Counsel, Legal Division, at (916) 322-5660 or in writing at the address indicated above.

Afternoon Program (1:30 p.m. to 4:00 p.m.)

(3) Proposed Regulation 18329.5: Commission Advice Procedure—Sections 87300-87306 (Conflict-of-Interest Codes)

Regulation 18329 currently sets out a procedure for requesting oral or written advice from the Commission. The Commission is considering another regulation to set out a specific advice procedure regarding conflict-of-interest codes as applied to individuals, agencies and code-reviewing bodies. Proposed regulation 18329.5 was discussed during a previous interested persons' meeting on November 14, 2002, and at the December 13, 2002, Commission meeting. The proposed regulation is being revised with a new policy direction, which will be discussed at the upcoming interested persons' meeting.

At the December 13, 2002, Commission meeting, staff was asked to explore the Commission's role in determining whether an agency's conflict-of-interest code ("COIC") is correct, when requested to do so by a designated employee. Therefore, the discussion on the proposed regulation will incorporate the following:

a. The commissioners tentatively agreed that any procedure developed should require the individual to first work with his/her agency regarding his/her designation in a COIC. If this process does not resolve the issue, the individual alone may request and receive formal written advice from the FPPC as long as the requirements in regulation 18329(b) are met.

Discussion: Should the agency be involved in this process when an individual requests advice from the FPPC? What is the role, if any, of the code-reviewing body in this process?

b. Staff will examine other procedures in addition to the advice process.

Discussion: Are there situations when the FPPC should work directly with an agency to amend its COIC? Would this be in lieu of issuing advice to an individual? What should be the procedure if the FPPC, when it is not the code-reviewing body, determines that the COIC is incorrect?

c. Enforcement Issues: What is the procedure when an individual challenges a filing obligation in the COIC? Should the Commission or the code-reviewing body determine whether the code designation is appropriate? Should the individual be able to appeal the code-reviewing body's decision to the Commission? Would such an appeal stay the filing obligation?

If you have questions or comments on this matter, please contact Jill Stecher, Counsel, Legal Division, at (916) 322-5660 or in writing at the address indicated above.

(4) Statements of Economic Interests (Members of Boards or Commissions of Newly Created Agencies).

The Commission is considering adopting proposed regulation 18754, which would require members of boards or commissions of newly created state or local agencies to file statements of economic interests prior to the time a conflict-of-interest code goes into effect for his or her agency. This requirement implements newly enacted section 87302.6, which requires these individuals to file statements of economic interests at the same time and in the same manner as statements required of individuals subject to Government Code section 87200. Public input is sought on the following provisions of the proposed regulation:

Filing dates for assuming office, annual, and leaving office statements;

Where members of a board or commission of a newly created state, county, city, or multi-jurisdiction agency are to file their statements, and the identity of the respective filing officers;

Certain limited exceptions from filing; and

The interplay, if any, between statements filed pursuant to the proposed regulation and the filing obligations subsequently imposed on these individuals when a conflict-of-interest code becomes effective for their agency pursuant to Government Code section 87302.

If you have questions or comments on this matter, please contact Kenneth L. Glick, Counsel, Legal Division, at (916) 322-5660 or in writing at the address indicated above.

Additional information relating to the topics may be posted on the Commission's website at www.fppc.ca.gov. prior to the meeting.

January 2003

Re: Termination of Mailing of Notices of Interested Persons' Meetings and Proposed Regulatory Action

Dear Interested Person:

As a cost-saving measure, we are considering terminating the mailing of notices of interested persons' meetings and notices of proposed regulatory action. In the future, notices of interested persons' meetings and notices of proposed regulatory action will be distributed via e-mail.

Please note that notices of interested persons' meetings and notices of proposed regulatory action and the text of proposed regulations are available on our website at www.fppc.ca.gov.

Notices of proposed regulatory action are also available in the California Regulatory Notice Register, which is available by subscription and is posted on the Office of Administrative Law's website at www.oal.ca.gov.

Should you elect to receive notice of interested persons' meetings and notices of proposed regulatory action via e-mail, please fill out the form below and return it to: Fair Political Practices Commission, Attn: Joan Giannetta; 428 J Street, Suite 620, Sacramento, CA 95814.

PLEASE SEND NOTICES OF INTERESTED PERSONS' MEETINGS AND NOTICES OF PROPOSED REGULATORY ACTION OF THE FAIR POLITICAL PRACTICES COMMISSION VIA E-MAIL. SEND MY COPY TO:

Name

Company

Address – Including City & Zip Code

E-Mail Address